DIVISION V
FAMILY LAW

CHAPTER 1
GENERAL

Rule 5.1.1

Applicability of Rules

These rules are intended to provide uniformity of practice and procedure in all departments of the San Diego Superior Court hearing and deciding Family Law matters. Variations between divisions must be approved by the Supervising Judge of the Family Courts and must not constitute a significant deviation from these rules. All litigants and attorneys must comply with these rules in addition to all applicable statutes and California Rules of Court. Litigants representing themselves without an attorney and all attorneys will be held to the same standards of practice and procedure. The court is not permitted to provide legal assistance to unrepresented litigants. All references to "counsel" and/or "attorney" in these rules apply to any unrepresented litigant.

Sanctions. For any noncompliance with these rules or any order of the Court, the Court may set an order to show cause why sanctions should not be imposed pursuant to Code of Civil Procedure section 575.2.

(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.1.2

The Family Law Courts

The street addresses and telephone numbers for each of the Family Law courts are listed on the court's web site at: www.sdcourt.ca.gov/portal/page?_pageid=55,1060004&_dad=portal&_schema=PORTAL

Each of the Family Law courts ("Central" in San Diego, "South County" in Chula Vista, "East County" in El Cajon, and "North County" in Vista) is a separate division and a separate venue. A listing of filing districts by zip code is available at: www.sdcourt.ca.gov/pls/portal/docs/page/sdcourt/familyandchildren/wheretofilefl.htm

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.1.3

Work of the Family Law Courts

The Family Law Divisions of the San Diego Superior Court hear all motions and trials in Family Law matters including, but not limited to, all proceedings under the Family Code; the Hague Convention on Preventing International Abduction of Children; *Marvin* actions; and all related discovery motions.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.1.4

Words and Phrases Defined

Unless the context otherwise requires, these definitions govern the construction of these rules.

"**Attorney**" and "**Counsel**" are used interchangeably and synonymously in these rules.

"Child" includes the plural **"children"** where the context requires.

"Declaration of Disclosure" as defined by Family Code sections 2103, 2104 and 2105.

"Shall" and **"must"** are mandatory; **"will"** and **"may"** are permissive.

"Self-Represented Litigant," "Pro Per," "Pro Se" and **"In Propria Persona"** mean any litigant or party who is representing himself or herself in a Family Law matter without an attorney of record.

"Writing" is as set forth in Evidence Code section 250.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.1.5

Applicable Abbreviations

The following abbreviations are used throughout these rules:

ADR	=	Alternative Dispute Resolution
CLETS	=	California Law Enforcement Telecommunications System
CMC	=	Case Management Conference
DCSS	=	Department of Child Support Services, County of San Diego
DVPO	=	Domestic Violence Protective Order
EPO	=	Emergency Protective Order
FCS	=	Family Court Services
FSD	=	Family Support Division
MSC	=	Mandatory Settlement Conference

OSC = Order to Show Cause
SC = Short Cause Trial
STC = Status Conference
TRO = Temporary Restraining Order
UCCJEA = Uniform Child Custody Jurisdiction and Enforcement Act
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.1.6
Reserved for Future Use
(Del. 1/1/2008)

CHAPTER 2
CASEFLOW MANAGEMENT

Rule 5.2.1
Direct Calendar Case Assignment
New cases are assigned randomly to a judicial officer for all purposes. All appearances in the case must be made before the assigned judicial officer unless otherwise ordered. The Petitioner/Plaintiff will receive a notice of case assignment when the petition/complaint is filed. The Petitioner/Plaintiff must serve the Respondent/Defendant with a copy of the notice of case assignment with the petition/complaint.

The time limits for filing a peremptory challenge are set forth in California Code of Civil Procedure section 170.6 and California Government Code section 68616, subdivision (i).
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.2
Alternative Dispute Resolution
The Family Code and the California Rules of Court encourage Alternative Dispute Resolution of Family Law Matters. The Family Law Court promotes and encourages the use of mediation, arbitration, Collaborative Family Law, a private judge (Temporary Judge) and, when appropriate, judicial case management as methods of Alternative Dispute Resolution in Family Law cases.

A. Mediation or Arbitration. Except in cases of domestic violence, attorneys are encouraged to provide their clients with (Form D-9) Alternative Dispute Resolution Informational Notice available at Family Law Business Offices or online at www.sdcourt.ca.gov, and to advise their clients of the availability of mediation and arbitration. Parties wishing to participate in mediation or arbitration must advise the court as soon as possible by submitting a written stipulation signed by both parties and their attorneys if the parties are represented. Where known, the name of the Mediator or Arbitrator selected by the parties must be included in the written stipulation.

B. Collaborative Family Law

1. A case will be designated a "Collaborative Family Law Case" if the parties have signed and filed with the court a written Collaborative Family Law stipulation which provides that:

a. The parties will engage in the full and candid informal exchange of all relevant information and documentation;

b. The collaborative attorneys are disqualified from continuing to represent the parties if the Collaborative Family Law process is terminated by either party;

c. The parties will jointly retain any experts needed to assist them in reaching a collaborative settlement;

d. All documents filed in the case will be submitted by the parties in propria persona;

e. No contested matters will be presented for determination by the court either by Motion or Order to Show Cause while the case is proceeding as a Collaborative Family Law Case; and

f. The words **"Collaborative Family Law Case"** will be included in the caption of every document filed with the court.

2. The essence of the Collaborative Family Law process is a series of intense settlement negotiations. Therefore, pursuant to the written Collaborative Family Law stipulation of the parties:

a. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the Collaborative Family Law process will be admissible as evidence or subject to discovery, and disclosure of such will not be compelled in any non-criminal proceeding;

b. No writing that is prepared for the purpose of, in the course of, or pursuant to a Collaborative Family Law Case will be admissible or subject to discovery, and disclosure of the writing will not be compelled in any non-criminal proceeding; and

c. All communications, negotiations, and/or settlement discussions by and between the participants in a Collaborative Family Law Case will remain confidential.

3. In any Collaborative Family Law case, pursuant to the written Collaborative Family Law stipulation of the parties, the Court will:

a. Consider collaborative counsel to be advisory counsel and not attorneys "of record;"

b. Refuse to schedule any contested hearings, impose discovery deadlines, or enter any scheduling orders; and

c. Provide notice and an opportunity to be heard prior to any dismissal based on a failure to prosecute or delay.

4. The designation of a case as a Collaborative Family Law Case is completely voluntary and requires the agreement of all parties. The Collaborative Family Law Case designation will be removed by the court upon the written stipulation of the parties or upon the filing and service of a Termination Election indicating a party's desire to terminate the Collaborative Family Law process. Upon the filing of a Termination Election, the clerk shall schedule a Status Conference and notify the parties thereof.

C. Use of a Privately Compensated Temporary Judge (Temporary Judge). With the court's authorization, the parties may agree to use a Privately Compensated Temporary Judge ("Temporary Judge") to adjudicate their case. (Cal. Rules of Court, rules 2.830-2.834.)

1. Submission of Stipulation - Parties must submit the stipulation, "Notice of Posting", and proposed order for appointment of a Temporary Judge to the courtroom of the Supervising Family Judge (located in the Central Division). (See Stipulation and Order for Appointment of Privately Compensated Temporary Judge (form SDSC D-008) and Notice of Posting (form SDSC D-010) located at www.sdcourt.ca.gov.)

2. Representations by the Stipulating Parties - By submitting the stipulation and proposed order to the court, the stipulating parties and their attorneys represent that they are the only parties in the case and that no new parties will be added.

3. Application of Settlement Conference Rules to Proceedings before Temporary Judges - Notwithstanding rule 5.2.6(c), the case will be exempt from the Settlement Conference requirements upon the signing of the proposed order by the Supervising Family Judge. Until the order is signed, the case remains subject to the Settlement Conference rules, to all other applicable rules of this court, and all previously ordered deadlines, hearings, and other orders will remain in full force and effect.

4. Case Management Conference (CMC) and Status Reports - The Supervising Family Judge will set a CMC every six months at the time the stipulation and order is signed to be heard in the department of the Supervising Family Judge. Each month, the Temporary Judge must submit a report to the Supervising Family Judge giving the status of all matters under submission including a description of the matters taken under submission and the length of time under submission. (Judicial Administration Rule 10.603(c)(3).)

5. Use of Court Facilities, Court Personnel and Summoned Jurors

a. The use of court facilities, court personnel and summoned jurors for matters pending before a Temporary Judge are governed by rule 2.833 of the California Rules of Court.

b. Pursuant to California Rules of Court, rule 2.833(b), the testimony of a Family Court Services Counselor is subject to the approval of the Presiding Judge. The subpoenaing party must comply with Local Rule 5.2.8 and, in order to minimize disruption to court operations, set a date and time certain for the testimony.

6. Exhibits - All exhibits must be available for public inspection as they would be if the case were being tried by the court. Upon final determination of the case by the Temporary Judge, parties may stipulate to the return of the exhibits.

7. Filing of Original Papers and Orders of Temporary Judge

a. All original papers must be filed with the clerk prior to submission of a filed stamped conformed copy to the Temporary Judge.

b. Minute orders will not be accepted unless they are signed by the Temporary Judge. If the minute order format is used, the order must set forth the name, address, telephone number, and CSR number of any privately retained court reporter. If electronic reporting is used, the minute order must reflect this.

8. Notice of Pending Matter - Parties must file one original and one copy of the notice required by California Rules of Court, rule 2.833(a). (Notice of Posting (form SDSC D-010) available at www.sdcourt.ca.gov.) The Clerk of the Court will post the notice in the lobby of the Family Court location where the case was initiated.

9. Interested Persons Wishing to Attend a Hearing before a Temporary Judge - Interested persons wishing to attend a hearing or hearings on a matter heard by a Temporary Judge must serve a "request for special notice" with the parties to the action. A copy of the "request for special notice" along with a proof of service must be filed with the court. The interested persons must thereafter be given notice of all hearings in the matter pending before the Temporary Judge.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.3

Filing Locations

Family Law cases must be filed in the division in which the Petitioner and/or the Respondent reside, or, in paternity cases, where the child resides. A listing of filing districts by zip code is available at: www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/FAMILYANDCHILDREN/WHERETOFILEFL.HTM. Original petitions must bear the proper filing location and be filed in the appropriate division.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.4

***Marvin* Actions**

Any family law related action not specifically authorized by the Family Code (e.g., *Marvin* complaints) initially must be filed as a separate proceeding in the Family Law Division. Upon the Court's own motion or if a timely request for a jury trial is made and granted, the assigned judicial officer will consult with the supervising judge to determine whether the matter will remain in the Family Law Division for trial. On the court's own motion or upon noticed motion, the action may be coordinated with a pending Family Law case pursuant to California Rules of Court, rule 3.350. (See also Local Rule 5.2.5.)
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.2.5

Consolidated Cases

If the court consolidates a case, the case of broader jurisdiction or the lower case number if the cases are of equal jurisdiction will be designated as the lead case. The originals of all papers thereafter filed will be placed in the lead case file. (Cal. Rules of Court, rule 3.350.) Any hearing date in any case other than the lead case will be vacated or reset, and all future hearing dates will be noticed under the lead case number.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.2.6

Status Conference (STC)

In those cases where both Petitioner and Respondent are self-represented, the court will calendar a STC for the earlier of 150 days after the filing of the petition or 90 days after the filing of the response, unless the parties have requested an earlier date or the parties have filed an ADR or Reconciliation stipulation pursuant to sections C and D below or a judgment has been entered or a dismissal has been filed.

A. Unrepresented parties are required to meet with a staff attorney from the Family Law Facilitator's Office to discuss the status of their case and receive necessary assistance.

B. Scheduling and Notice. The court will provide notice of the STC to parties who have filed an appearance in the case. Each party may request one continuance by telephone up to one day before the scheduled conference date for a reasonable period of time. The continuance must be by stipulation if Respondent has appeared. Additional continuances may be requested ex parte with a declaration showing good cause. It is the obligation of all self-represented parties to keep the court apprised of their current mailing address. If a party changes his or her residence without promptly filing a Notice of Change of Address (available free of charge in the Business Office of the court), the notice of the STC provided to the party may be returned by the Postal Service as undeliverable. If this results in a failure to appear at the STC, the court will likely determine that the case has been abandoned and will dismiss it without prejudice as a sanction for non-compliance under Code of Civil Procedure section 575.2 without further notice.

C. Alternative Dispute Resolution (ADR). Parties who file a stipulation indicating they are participating in ADR will be exempt from the STC for a period of 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a STC.

D. Reconciliation. Parties who file a stipulation indicating they are attempting reconciliation will be exempt from the STC for a period of 12 months, however, if a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a STC.

E. Attendance. All parties to whom notice of the STC has been sent by the court must attend the STC. If a party fails to attend an initial STC, and the notice sent by the court has not been returned by the Postal Service as undeliverable, the court will re-notice a second and final STC within 90 days. If the noticed litigant(s) fail to attend the second STC, the court will likely determine that the case has been abandoned and will dismiss it without prejudice as a sanction for non-compliance under Code of Civil Procedure section 575.2 without further notice.

F. Reinstatement of Dismissed Cases. A party to a case dismissed pursuant to this Local Rule for failure to attend a STC may apply within 6 months of the dismissal to have the case reinstated under Code of Civil Procedure

section 473, subdivision (b). Upon a showing of good cause, the court may reinstate the case upon such terms and conditions as the court deems just.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.7

Case Management Conference (CMC)

In those cases where one or both of the parties is represented by counsel, the court will calendar a CMC for the earlier of 150 days after the filing of the petition or 90 days after the filing of the response, unless the parties have requested an earlier date or the parties have filed an ADR or Reconciliation stipulation pursuant to sections C and D below.

A. Purpose. The purpose of the CMC is to discuss the timetable for the resolution of the case and for the court to make all appropriate orders.

B. Scheduling and Notice. The court will provide notice of the CMC to all parties who have entered an appearance in the case. Each party may request one continuance for a reasonable period of time by telephone up to one day before the scheduled conference date. The continuance must be by stipulation if Respondent has appeared.

C. Alternative Dispute Resolution (ADR). Parties who file a stipulation that they are participating in ADR will be exempt from the CMC for a period of up to 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a CMC.

D. Reconciliation. Parties who file a stipulation that they are attempting reconciliation will be exempt from the CMC for a period of up to 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a CMC.

E. Attendance. All Parties who have been noticed must be present at the CMC unless represented by counsel, in which case, counsel must appear in person or by telephone. The parties or counsel must be prepared to discuss the timetable for resolution of the case and be sufficiently familiar with the facts so that the court may make all appropriate orders. Counsel making a special appearance for counsel of record must have actual knowledge of the facts and procedural history of the case.

F. Orders. The court may make any of the following orders:

1. Set a date for the exchange of Final Declarations of Disclosure and the filing of proofs of service, consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.

2. Establish a plan for the completion of discovery, consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.

3. Set a date for the preliminary exchange of expert witness information, consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.

4. Set an FCS date in cases where custody/visitation is at issue, and no evaluation or private mediation is pending or completed.

5. Address the selection of joint experts.

6. Address the appointment of a Special Master pursuant to the Code of Civil Procedure and the California Rules of Court.

7. Address any issues to be bifurcated.

8. Set a date for the exchange and filing with the court of the Family Law CMC Form which includes a list of settled issues and a list of issues to be litigated. (See www.sdcourt.ca.gov for the most recent version of this form under "Family Law" forms.)

9. Set an MSC.

10. Any other orders the court deems appropriate for the expeditious resolution of the case, including the setting of another CMC.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.8

Mandatory Settlement Conference (MSC)

A. Calendaring. The court will set a Mandatory Settlement Conference in all Family Law cases unless specifically exempted. The MSC will be set at the CMC. Absent a court order allowing a party to appear by telephone, both parties and their counsel of record must personally attend the MSC. Counsel and all parties must be present for the calendar call. Due to the time settlement judges spend reading the briefs and preparing for the MSC, there will be NO continuances granted on the day of the MSC.

B. Settlement Conference Panel. The court will appoint a family law attorney pursuant to the qualifications set forth in California Rules of Court, rule 2.812, as a temporary judge to each case to assist the parties and trial counsel in reaching a settlement at the MSC. If available, two temporary judges will be assigned to more complex cases. The Supervising Judge and any judges not otherwise engaged may be available for additional assistance.

C. Meet and Confer Requirement. Counsel must meet and confer either in person or by telephone at least five court days before the MSC to resolve as many issues as possible and to identify those issues which remain unresolved. The results of this conference must be included in the settlement brief.

D. Settlement Briefs. Each party must prepare a settlement brief. Documents to be submitted to the settlement judge(s) with the settlement briefs include a current Final Declaration of Disclosure and, if support or fees are at issue, a current Income and Expense Declaration. Each party must provide a copy of each of these documents to opposing counsel and the settlement judges no later than 4:00 p.m. three court days preceding the MSC. The settlement briefs must be in the same format as the Mandatory Trial Statement (See form at www.sdcourt.ca.gov for the most recent version of this form under "Family Law" forms.) Failure to prepare and serve a Settlement Brief in accordance with these rules may subject a party or counsel to a sanction. Each party must state with specificity that party's proposal for the resolution of each contested issue and the reasons therefor.

E. Division of Furniture, Furnishings, and Personal Effects. If the parties have been unable to divide their furniture, furnishings, and personal effects by agreement, the parties must jointly prepare and submit a combined list of these items. The list must include a description of each item, and opposite that item each party's position concerning the value, character (separate or community), and the proposed disposition of the asset.

F. *Epstein* Credit Claims. If a party is claiming reimbursement for payment of community debts from separate funds following separation, that party must attach to the settlement brief all exhibits to be introduced into evidence on this issue at trial. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

G. Family Code Section 2640 Reimbursement Claims. A party claiming reimbursement pursuant to Family Code section 2640 must attach to the settlement brief any exhibits which that party intends to introduce at the time of trial to substantiate the claim(s). This includes canceled checks, bank statements, title documents, escrow documents, etc. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

H. Reference to Special Master. Failure to meet the requirements set forth in sections E, F, and above may result in those issues being referred to a Special Master pursuant to Code of Civil Procedure section 639. Any costs relating to proceedings before the Special Master will be borne by one or both of the parties as ordered by the court.

I. Valuation of Vehicles. Current *Kelley Blue Book* values, whether obtained from the current printed book or from the *Kelley Blue Book* on-line service (www.kbb.com), for all vehicles will be accepted into evidence without further foundation. There will be a rebuttable presumption that the value of the vehicle in question is midway between the "wholesale" and "retail" values, or the on-line "trade-in" and "retail" values, with appropriate adjustments for extras and mileage. Copies of the relevant *Kelley Blue Book* information for all vehicles whose value is in issue must be attached to both parties' settlement briefs.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.9

Telephonic Appearances in Family Court

A. Appearance by Telephone.

1. An attorney of record may appear by telephone in CMCs and Joint Requests for Continuances.

2. A self-represented party may appear by telephone in a Joint Request for Continuance.

3. Appearances by telephone at any other hearing may only be made with the prior permission of the court, for good cause shown. The court may permit an appearance by telephone at any time under such conditions and circumstances as the court deems appropriate. A request to make an appearance by telephone must be communicated to the department's calendar clerk and to all other self-represented parties or attorneys of record not less than two court days before the hearing.

B. Personal Appearance Otherwise Required. A personal appearance is required for all other hearings and proceedings.

C. Reporting. All hearings and proceedings involving an appearance by telephone shall be reported to the same extent and in the same manner as if the participants had appeared in person. If more than one self-represented party or attorney of record is appearing telephonically in a given hearing or proceeding, each speaker shall identify himself or herself as often as necessary to maintain a good record of the hearing or proceeding.

D. Costs. Costs, if any, incurred in connection with a telephonic appearance shall be borne by the party or attorney making the appearance or equally by both/all sides where all parties in the action are appearing telephonically. However, a party who has obtained a fee waiver prior to a telephonic appearance shall not be required to pay costs, if any, incurred in connection with the telephonic appearance.

E. Advisement Regarding Appearance by Telephone. Any self- represented party or attorney of record who elects to make an appearance by telephone under this rule is hereby advised that:

1. A self-represented party or attorney of record has a right to appear personally at the hearing or proceeding, and by giving notice of an intention to appear by telephone waives that right.

2. A self-represented party or attorney of record appearing by telephone shall be prepared to provide information (e.g., driver's license number, Social Security number, State Bar number, etc.) sufficient to establish the identity of the self-represented party or attorney to the satisfaction of the court.

3. A self-represented party or attorney of record appearing by telephone will be unable to assess visually the demeanor of witnesses or other participants at the hearing and may be unable to examine visually documents and evidence presented at hearing. By electing to appear telephonically, the self-represented party or attorney of record acknowledges and agrees to these limitations.

(Adopted 1/1/2007; Rev. 1/1/2008)

CHAPTER 3
EX PARTE MATTERS

The primary purpose of ex parte hearings is to address emergency and procedural matters that cannot be heard on the court's regular motion calendar.

Rule 5.3.1

Time for Ex Parte Matters

Notice of ex parte hours will be posted in each of the Divisions of the court. Refer to the court's website for current ex parte information at www.sdcourt.ca.gov.

A judicial officer of any Division of the Family Court may hear an emergency ex parte request at any time that the business of the court permits during its normal business hours.

Ex parte requests will generally be heard and determined in open court and on the record except when, in the discretion of the judicial officer, such hearing would more properly be held in chambers and off the record.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 5.3.2

Required Notice to Opposing Counsel/Party

Except as provided in Family Code section 6300, counsel or a party requesting an ex parte hearing must notify the opposing counsel or party, including the Department of Child Support Services if appropriate, of the ex parte relief requested by no later than 10:00 a.m. on the previous court day.

"Notice" of an ex parte appearance given by message left on a voice mail machine DOES constitute notice under these rules. "Notice" of an ex parte appearance given by facsimile ("fax") machine DOES NOT constitute notice under these rules unless this method of notice has been previously agreed upon by and between counsel or the unrepresented litigants.

The requesting counsel or party must provide a Declaration of Notice to the Court at the time of the ex parte appearance. The Declaration of Notice must include, under penalty of perjury, the details of how and to whom notice of the date, time, and place of the ex parte hearing and a description of the relief to be requested was given, or a complete description of the good faith effort to provide such notice.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.3

Exceptions to the Notice Requirement

Except as provided in Family Code section 6300, if the moving party asserts notification may negate the benefit of the requested relief, or explains why notice could not be given, ex parte relief may be granted without the required notice. The Declaration of Notice must set forth the facts upon which such claim is based. The parties may stipulate that notice is unnecessary.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.4

Case Number Required for an Ex Parte Appearance

The party making an ex parte appearance must obtain a case number before the court will consider the application for an emergency order, including a request for a temporary restraining order, provisional remedy, or any other emergency relief.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.5

Requesting the Court File Before an Ex Parte Appearance

When ex parte notice is given in the Central and North County Divisions, counsel must request that the court file be made available to the judicial officer assigned to hear the ex parte matter. No advance notice to the court to pull a file is required in the South and East County Divisions. The telephone numbers for requesting the case file are available on the court's website at www.sdcourt.ca.gov.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.3.6

Order of Hearing Ex Parte Matters

Judicial officers will hear ex parte matters in an order which will facilitate the matter for the court and counsel and so as not to significantly interfere with the court's normal calendar. Any opposed ex parte request which cannot be heard prior to the court's normal calendar may be added to the calendar and heard in due course.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.7

Meet and Confer

If an ex parte request is contested, both sides must meet and confer on the issue(s) in dispute. The meet and confer conference must occur in a way that will ensure that all issues and positions of the parties have been discussed before appearing before the court. Failure to comply with this rule may result in sanctions, including denial of the ex parte request.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.8

Ex Parte Application Form, Supporting Declarations, and Proposed Order

The requesting party must completely fill out the pre-printed NCR ex parte application form (SDSC D-046). If the opposing party or counsel is present, the requesting party must personally serve the opposing party or counsel with the ex parte application form, all supporting declarations, and the proposed order. The completed form, all declarations, and the proposed order must be presented to the judicial officer or the bailiff of the court prior to the ex parte hearing.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 5.3.9

Evidentiary Declarations

The judicial officer will only consider ex parte requests that are supported by written evidentiary declarations that have been signed by the declarant under penalty of perjury. The supporting declaration(s) must describe why the ex parte request cannot be heard on the court's regular motion calendar. The supporting declaration(s) must be filed with the court and made a part of the court's file. Supporting declarations are not required for case management issues if jointly requested by the parties and/or counsel.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.10

Exceptions to Notice, Application and Evidentiary Requirements

A. Requests for the following types of ex parte relief do not require notice to opposing counsel, an Ex Parte Application, or supporting declarations:

1. Signature of an order or judgment which opposing counsel has approved or agreed not to oppose;
2. Signature of an order or judgment after a default proceeding;
3. Wage and earning assignment order (see Local Rule 5.3.13);
4. Restoration of former name after judgment; and
5. Order for publication or posting.

B. The business office at each division has a drop box where these ex parte requests may be deposited for processing. An attorney service slip or stamped self-addressed envelope should be included if conformed copies are requested.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.11

Service of Documents

If the opposing party or attorney appears at the ex parte hearing, the party seeking relief must provide copies of the motion and supporting documents at the earliest possible time. The court will not proceed with the ex parte

hearing until the opposing counsel/party has had the opportunity to review the motion and documents. If no one appears to oppose the ex parte relief, the requesting party shall serve counsel or the other party with conformed copies of the ex parte application form, all supporting declarations, and the proposed final order (if one is signed), by mail within 24 hours of the ex parte hearing.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.12

Ex Parte Motions Re Order Shortening Time for Hearing Taking of Deposition

When requesting an order shortening time for hearing and/or taking deposition, the supporting evidentiary declaration(s) must set forth the necessity for the order shortening time. For good cause shown, time for service may be shortened up to two court days before the hearing date and up to five calendar days before the taking of a deposition.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.13

Earnings Assignment Orders for Arrearages

Earnings assignment orders for arrearages accrued under any support order may be requested ex parte by completing a declaration, signed under penalty of perjury, setting forth the month to month accrual of amounts paid and amounts unpaid, and the total amount of arrearages (principal and interest) requested. Notice to the opposing counsel or party is not required. The court generally will grant ex parte earnings assignment orders for arrearages. Nevertheless, such orders are without prejudice to subsequent attack by a motion to quash.

Attorney fees will not be granted in connection with ex parte earnings assignment orders for arrearages. Fees incurred to obtain an earnings assignment order for arrearages may be requested by a noticed motion set on a regular motion calendar.
(Adopted 1/1/2008)

Rule 5.3.14

Ex Parte Motions Re Custody and Visitation

Pursuant to Family Code section 3061, an order regarding custody stipulated to by counsel may be signed by a judicial officer only when a copy of the custody agreement signed by the parties and counsel or an appropriate declaration is attached to the application.

Pursuant to Family Code section 3064, other than stipulated orders, ex parte orders regarding child custody and visitation will be granted only upon a clear showing of immediate harm to the child or immediate risk that the child will be removed from the State of California.
(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008)

Rule 5.3.15

Ex Parte Motions Regarding Vacation and/or Holiday Schedules

Ex parte motions to change a child's vacation or to request a change to the holiday visitation schedule or the school that the child attends are disfavored. Requests for such changes should be presented on a regular motion calendar. A judicial officer may grant an order shortening time for such hearing.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

CHAPTER 4
TEMPORARY RESTRAINING ORDERS (TRO's)

Rule 5.4.1

Appropriate Forms and Filing with the Sheriff

When seeking a TRO pending a court hearing, the current forms adopted by the Judicial Council must be used. In all cases, including cases which are not filed under the Domestic Violence Protection Act, parties seeking personal conduct, stay away, or residence exclusion orders must file an Order to Show Cause and Temporary Restraining Order and an Application and Declaration for Order (Domestic Violence). If custody or visitation orders are requested, parties must also file a Child Custody, Visitation and Support Request (DV-105) and a Child Custody and Visitation Order (DV-140).

The court will deliver a copy of the protective restraining order to the Sheriff for entry into the Department of Justice's computer system (CLETS). For the protective order to be enforced, the protected person must give a conformed, certified copy of the restraining order to the Office of the San Diego County Sheriff for service.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008, Rev. 1/1/2009)

Rule 5.4.2

Residence Removal Orders

Upon ex parte application, the court may issue a residence removal order pursuant to Family Code section 6321. If granted, a separate removal order (Order For Removal From Residence, SDSC D-072) directing the Sheriff to assist in the removal must be prepared and submitted to the court for signature. Two certified copies of the removal order are required by the Sheriff.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.4.3

Personal Conduct Orders

Upon ex parte application, the court may issue temporary personal conduct restraining orders pursuant to Family Code section 6320.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.4.4

Status of TRO When Hearing is Continued

Only the court may issue the TRO or continue the hearing on a domestic violence restraining order. TROs will not remain in effect during the continuance, absent a stipulation or court order. The moving party must submit Form DV-125 and Form EA-125 to the court, which if granted, would provide for the TRO to remain in effect pending the continued hearing. The party must then give the form to the Sheriff's office.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008; Rev. 1/1/2009)

Rule 5.4.5

Restraint of Accounts

The court will not grant a temporary restraining order to enjoin the removal of funds or securities from financial institutions or securities firms unless there is notice to the opposing side or a declaration stating facts which show a clear danger of the dissipation of funds.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.4.6

Restraining Orders in Non-Domestic Violence Cases

In non-domestic violence cases where orders other than custody and personal conduct, stay away, or residence exclusion are requested, parties must file an Order to Show Cause, an Application for Order and Supporting Declaration, and Temporary Orders. (FL-300 & 305.) In non-domestic violence cases, the party must prepare a declaration on a separate sheet and attach it to the Application.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

CHAPTER 5
ORDERS TO SHOW CAUSE/
LAW & MOTION RULES

Rule 5.5.1

Form of Papers Presented for Filing

All papers presented for filing must comply with the California Rules of Court, rule 2.100 et. seq. and rule 3.10. After the initial filing, all pleadings must bear the case number and the name of the judicial officer to whom the case has been assigned. The date, time, and department where the matter is to be heard must also be designated on the first page beneath the case number and nature of the paper. All OSCs and/or motions must indicate a time estimate immediately beneath the case number on the first page of the pleading.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.2

Exhibits Lodgments and Highlighting

Exhibits filed or lodged by Petitioner/Plaintiff must be numbered consecutively for each hearing beginning with Number 1. Exhibits filed or lodged by Respondent/Defendant must be lettered consecutively for each hearing beginning with Letter A. The evidentiary foundation for the exhibits must be set forth in the appropriate declarations filed with the court. A notice of lodgment listing the documents must be filed and served on all parties, and a copy must be submitted with the lodged material. Documents lodged with the court must be tabbed

and highlighted as required by the California Rules of Court to correlate to the notice of lodgment. Each document, particularly deposition testimony, must be marked in a manner that calls attention to the relevant portion(s) of the document or testimony. Exhibits accompanying a Motion or Order to Show Cause which exceeds 10 pages must be lodged rather than filed with the court. The provisions of the California Rules of Court, rules 3.116 and 3.1302 apply.

Lodged documents will be stamped "received" by the court. Following the return of the lodged documents by the court, the party lodging them must retain them until the applicable appeal period has expired. Due to limitations of storage space, counsel may not lodge exhibits more than 10 court days prior to the hearing except by court order. The party or his/her counsel must retrieve all lodged documents from the courtroom within five court days following the hearing or they may be discarded without further notice.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.3

Time for Service and Filing of Papers

Absent an order shortening time, all moving, opposing, and reply papers, as well as Orders to Show Cause, must be filed and served in compliance with Code of Civil Procedure section 1005, subdivision (b).

If an FCS appointment has been set, all papers for the mediator's review must be served in compliance with local rule 5.10.2.D.

Supplemental declarations to inform the court of new or different facts must be filed and personally served by either party up to five court days before the hearing. Responses to supplemental declarations must be filed and personally served before 10:00 a.m. two court days before the hearing. No reply declarations are permitted except as follows: If a party personally serves supplemental declarations at least 10 court days before the hearing, then responses to the supplemental declarations must be filed and personally served at least five court days before the hearing. Replies to responding declarations must be filed and personally served by 10:00 a.m. two court days before the hearing. The court may decline to consider any supplemental declarations which are not timely served or do not appear to be the result of newly discovered evidence or facts which were not available when the original pleadings were filed, or where the supplemental pleadings were filed late to gain a tactical advantage.

In cases where a temporary restraining order or a protective order has been issued under either Family Code sections 240, 2040 (children, property and insurance), 4620 (disposable property), 6320 (Domestic Violence Prevention Act), or 7710 (Uniform Parentage Act), filing and service of the moving and supporting papers must be in compliance with Family Code sections 242 and 243.

If a party objects to a pleading as not being timely served, the court may, in its discretion, refuse to consider the pleading or, for good cause shown, continue the hearing.

Post-judgment motions must be served pursuant to Family Code section 215. Service of post-judgment motions on the responding party's attorney is insufficient.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008)

Rule 5.5.4

Family Court Services Initial Screening Form

When filing an OSC regarding custody or visitation, the moving party must file a Family Court Services Screening Form (SDSC FCS-046).
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.5

Income and Expense Declarations

A current Income and Expense Declaration with verification of income pursuant to Local Rule 5.6.3 must be filed and served with the moving papers for any hearing involving financial issues, such as support, attorney fees and costs. Failure to comply with this rule may subject the party and/or his/her attorney to sanctions pursuant to Code of Civil Procedure section 575.2.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.6

Companion Matters

A party may file a companion matter only if reasonably related to the issues raised by the original OSC or motion. The companion matter must be filed and personally served by 10:00 a.m. five court days before the hearing. A response to a companion matter must be filed and personally served by 10:00 a.m. two court days before the hearing. No written replies are permitted.

Ex parte leave of court must be obtained prior to filing a companion matter to a hearing that has been specially set by the court.

Requests for attorney fees and standard restraining orders may be addressed in the responsive declaration without filing a companion matter. The same is true for affirmative relief regarding modification of support, custody, or visitation when the moving papers seek modification of support, custody, or visitation.
Absent prior court order, an Order to Show Cause re Contempt may not be filed as a companion matter and must be heard on a date before any other pending motions involving the same or similar subject matter. However, a request to determine arrears and/or for attorney fees and costs may be filed as a companion matter to an Order to Show Cause re Contempt for Failure to Pay Support.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008)

Rule 5.5.7

Reissuing Orders to Show Cause

Except as provided to the contrary in Family Code section 3062, OSCs not timely served may be "reissued" by the clerk, provided the original matter was filed less than 30 days before re-issuance is requested and the applicant files a completed form, "Application and Order for Reissuance of Order To Show Cause" (FL-306). A reissuance filed more than 30 days after the original filing requires a judicial officer's signature.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.8

Hearings On Orders to Show Cause and Noticed Motions

A. Calendaring. The Business Office will assign hearing dates on all OSCs and motions. Hearing dates are not available by telephone. The business office will advise as to the approximate setting dates. In addition, the court's website provides a ten-week calendar for domestic cases to assist counsel in selecting a date. Preferred dates and times for hearings may be indicated to the business office on the messenger slip or by other writing addressed to the clerk, such as a post-it note attached to the front page of the OSC. Absent good cause, hearings will proceed on the date set.

1. Motions to set support, or other motions in which the date of filing determines retroactivity, may be filed without setting a hearing date. The pleading must plainly state "NO HEARING DATE REQUESTED" just below the hearing date line. The motion must then be filed *sine die* (without a specific date). A copy of all pleadings nonetheless must be served promptly on the opposing counsel/party. The moving party must submit the following to set a hearing date in the ordinary course within 180 days of the original filing:

a. A new motion/OSC form as previously filed, but without the request for no hearing date.

b. A conformed copy of the first page of the originally filed motion/OSC.

c. Any new or additional affidavits or exhibits supporting the motion/OSC.

d. A proof of service showing the opposing party was properly served with the original motion/OSC as set forth above.

If the hearing is not set in the ordinary course 180 or fewer days after the original filing, the motion/OSC is off calendar. The court will not approve an order shortening time. If the moving party fails to provide a proof of service showing prompt notice to the opposing party following the original filing (no more than 15 days), the motion/OSC is off calendar. In both instances, the court loses the authority to award retroactive support.

2. At the time a hearing date is requested, the originally-filing party may separately file other and further motions/OSC's to be heard at the same date and time.

3. The opposing party may file a separate motion/OSC to determine support at any time.

B. Time Estimates. All OSCs and/or motions must indicate a time estimate immediately beneath the case number on the first page of the pleading. Short cause OSC matters are those which take no more than 20 minutes of court time. Long cause OSC matters are those which take more than 20 minutes but less than 40 minutes. Matters which require more than 40 minutes must be specially set by the court.

C. Continuances. Stipulated continuances of noticed motions or OSC's except contempt and domestic violence matters may be granted by telephone until 3:30 p.m. two court days before the scheduled hearing. The stipulated continuance may be made to any available court date and time as requested by counsel. Telephone requests for stipulated continuances should be directed to the calendar clerk for the department. The court may also grant stipulated continuances at the time of the calendar call. Nevertheless, if counsel has a good faith belief the hearing will not be heard on the merits at the scheduled date, a "Don't Read" notice should be provided in the same manner as a stipulated continuance. In all other instances, counsel and the parties should appear ready to proceed with the hearing.

Only the Court may issue the TRO or continue the hearing on a domestic violence restraining order. TRO's will not remain in effect during the continuance, absent a stipulation or court order. The moving party must obtain a "Reissue Temporary Restraining Order" (Form DV-125 and EA-125) from the Court and submit the order to the Sheriff's Office.

Continuances of OSC's re contempt must be requested in open court, with the citee present, or obtained by written stipulation including a signed consent by the citee to the continuance and a waiver of time to hear the contempt. The stipulation must be filed with the court at or before the time set for the original hearing. If the citee does not appear, upon request, a bench warrant will normally be issued and held until the new date to retain jurisdiction.

If custody or visitation is at issue and the FCS or private mediator's report is not available at least ten days before the hearing, the court will normally grant a continuance upon request of a party who has not had ten days to review the report.

Counsel must contact the court at least two court days before any scheduled hearing if the matter will not go forward for any reason in order to prevent an unnecessary review of the file.

D. Calendar Calls. The court will attempt to accommodate counsels' calendar conflicts upon reasonable request. Requests for calendar priority should be made at the calendar call. Counsel unable to appear at the calendar call must give notice of that fact to opposing counsel at the earliest reasonable time. The court must consider sanctioning offending counsel for failure to comply with this rule.

E. Manner of Presentation. Counsel should meet and confer before presentation of the case to determine which issues are settled, which issues are to be presented to the court as contested, and the total time estimate for their presentation. Counsel must present OSC's and motions in the following order:

1. Announce appearance;

2. Give the court an accurate time estimate for the presentation of the entire matter. Failure to do so may result in the hearing being interrupted, continued, or ultimately concluded at the end of the calendar.

3. Clearly state ALL contested issues;

4. Recite any stipulated matters for the approval of opposing counsel, the parties and the Court; and

5. Briefly present argument on each contested issue including a recommended resolution.

Counsel may not interrupt the opposing side's presentation, other than with valid evidentiary objections and must direct all remarks to the court. Once the court has rendered its decision, counsel must not attempt to reargue the case. It is, however, acceptable to inquire of the Court in order to clarify a ruling or correct a mistake.

F. Chambers Conferences. Chambers conferences may be held at the discretion of the judicial officer. The purpose of a chambers conference is solely to discuss matters with the court which should not be set forth on the record in open court.

G. Stipulation Forms. Long and short stipulation forms are available in all Family Law departments. The court encourages the use of these forms in lieu of oral stipulations. After the form is completed, counsel should give the form to the clerk for immediate filing and distribution. Use of the stipulation forms will eliminate the need for the filing of a subsequent order. If counsel desires, however, a typed formal order may be prepared and filed after filing the stipulation form.

H. Limitations on Evidence/Oral Testimony. It is the general policy of this court to consider only the papers filed with the court when granting or denying applications for orders. Factual arguments must be limited to evidence, and/or reasonable inferences drawn therefrom, which are contained in declarations filed with the court and signed under penalty of perjury. The court has discretion to elicit additional information from the parties and/or counsel. Oral testimony will generally not be received. If any party wishes to present oral testimony, written declarations must still be filed in a timely manner. Written notice of the intent to present oral testimony must be served on the opposing party at least five court days before the scheduled hearing. The notice must state the name[s] of the intended witness[es] and the subject matter of the witness[es]' testimony.

The written declarations must be the direct testimony of the declarant. Oral testimony must be limited to hostile third party witnesses or cross-examination on the contents of the written declarations and/or reasonable inferences drawn therefrom. Oral testimony may also include re-direct and rebuttal, if necessary. If the intended oral testimony will be cross-examination of the opposing party, a third party who submitted a written declaration on behalf of the opposing party, or a court-appointed expert witness, the party who wishes to conduct the cross-examination must set forth in a written declaration the reasons for requesting cross-examination, and that declaration must accompany the notice of intent to present oral testimony.

Failure to give the required notice will generally result in a denial of the request for oral testimony. Even if such notice is given, the taking of oral testimony is solely at the discretion of the court.

I. Awards of Attorneys' Fees and Costs. If attorneys' fees and costs are awarded on a monthly installment basis, acceleration provisions upon default will apply such that if any two payments are missed, the entire balance will immediately accelerate and become all due and payable.

J. Extra Copies of Pleadings. Counsel must bring an extra set of all relevant pleadings to the hearing. Due to last-minute filings and the volume of business, it is not uncommon for the court file to be incomplete.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008; Rev. 1/1/2009)

CHAPTER 6

DECLARATIONS OF DISCLOSURE, INCOME & EXPENSE DECLARATIONS AND TAX RETURNS

Rule 5.6.1

Declarations Of Disclosure

All preliminary Declarations of Disclosure ("DOD") must be prepared and served in compliance with Family Code sections 2103 and 2104.

All final DOD's must be prepared and served in compliance with Family Code section 2105 unless waived in compliance with Family Code section 2105, subdivision (d) or Family Code section 2110.

Pursuant to Family Code section 2106, except as provided in subdivision (d) of Family Code section 2105 or in Family Code section 2110, absent good cause, no judgment with respect to the parties' property rights will be entered without each party executing and serving their final DOD and filing a Proof of Service of the DOD. "Good cause" can only be established by a declaration, signed under penalty of perjury, stating sufficient supporting facts.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.6.2

Income and Expense Declarations

A current Income and Expense Declaration, and verification of income pursuant to Local Rule 5.6.3, must be filed *with the moving and responsive papers* for any hearing involving financial issues, such as support, attorney fees and costs. An Income and Expense Declaration is current if it is executed within 90 days of the hearing. Supplemental, updated, or responsive Income and Expense Declarations must be served at least five court days before the hearing.

The Income and Expense Declaration should be printed on green paper, and all portions of the form must be completed. The gross income of a co-habitee or new spouse must be set forth as provided on the Income and Expense Declaration, and all cash, funds on deposit, stocks, bonds, and other easily sold assets must be fully disclosed.

When attorney fees or costs are requested, the court requires actual amounts be entered on the lines "Cash and checking accounts, savings, credit union, money market, and other deposit accounts," and "Stocks, bonds and other assets I could easily sell." The attorney fees paid to date must be completed and must include all monies held in trust by the attorney for fees and costs. The fees owed to date provision must not include fees that have been paid. Insertion of the word "unknown" does not constitute compliance with this rule.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.6.3

Attachments to Income and Expense Declaration

To verify current income, parties must serve copies of the following documents with their Income and Expense Declaration. Documents that are required by this rule to be served with the Income and Expense Declaration may be lodged with the court at the time of the hearing.

For salaried employees: The prior calendar year's W-2 and all pay stubs for the last two months showing all forms of year-to-date earned income.

For self-employed individuals, including independent contractors: A schedule reflecting all compensation received year-to-date and the last two filed IRS 1040 Schedule C or C-EZ; profit-and-loss statements and balance sheets for the two prior calendar years and the current year-to-date.

For employees who are shareholders in a closely-held corporation: The prior calendar year's W-2; all pay stubs for the last two months showing all forms of year-to-date earned income; all IRS K-1's for the two prior years; the last filed IRS Schedule E (Part II); profit and loss statements and balance sheets for the two prior calendar years and the current year-to-date.

For partnership income: A schedule reflecting all compensation received year-to-date, all IRS K-1's for the two prior years; the last filed IRS Schedule E (Part II); profit and loss statements and balance sheets for the two prior calendar years and the current year-to-date.

For rental income: The last filed IRS Schedule E (Part I); summaries of all rental receipts, deposits, disbursements and expenses for the prior calendar year, and for all periods year-to-date.

For dividend income, interest income or other unearned income: The prior calendar year's IRS 1099's; the last filed IRS Schedule B; an itemized summary of all funds on deposit, shares of stock, bonds, or other income-producing assets owned, and the rate of return currently being paid thereon; and, any income derived therefrom during the prior calendar year, and year-to-date.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.6.4

Disclosure of Income Tax Returns

When child, family, or spousal support is requested, a party may require the opposing party to provide income tax returns pursuant to Family Code section 3552. A request for tax returns must be made no later than 10:00 a.m. five court days before the hearing. The tax returns including all Schedules, W-2's, 1099's and K-1's must be provided to opposing counsel on the earlier of five court days after the request or 10:00 a.m. two court days before the hearing.

Tax returns served pursuant to this rule must not be filed with the court except as provided in Family Code section 3552.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.6.5

Privileges Retained

The above rules concerning attachments to Income and Expense Declarations and production of income tax documents are subject to any and all privileges held by a party or any third party whose privilege for non-disclosure would be violated by a party complying with these rules.

(Adopted 1/1/2005; Renum. 1/1/2006)

CHAPTER 7
ONE DAY TRIALS

Rule 5.7.1

One Day Trials

A. Time Limit. One day trials may not exceed one court day including time for the judge to review the file, read the trial briefs, and issue a ruling. Cases that exceed the one day time limit may result in a mistrial and be rescheduled as a long cause trial.

B. Calendaring. The court will set one day trials as its calendar permits. The court may continue a trial for good cause shown. If counsel or parties intend to request a continuance by stipulation, notice thereof must be given to the court as specified in Local Rule 5.5.8.C above.

C. FSD. See Chapter 9 of these rules for additional information governing trials in FSD.

D. Custody and/or Visitation Issues. If custody or visitation is in issue, the parties must meet with FCS before trial. This meeting must be scheduled sufficiently in advance of trial to allow the counselor to prepare and file a recommendation at least 30 calendar days before the scheduled trial date.

E. Mandatory One Day Trial Statements. Counsel or parties must prepare, file, and serve a trial statement, and if financial matters are at issue, current Income and Expense Declaration. The Trial Statement must be in the form set forth in form "Mandatory Trial Statement" which can be found at www.sdcourt.ca.gov under family law forms. Copies of these documents must be served personally on opposing counsel or parties no later than 2:00 p.m. two court days before trial. The originals of the trial statement and a current Income and Expense Declaration must be filed with the clerk in the trial department by **3:00 p.m. two court days** before trial. Failure to timely serve and file the trial statement and current Income and Expense Declaration may subject the non-complying counsel to sanctions. This rule does not apply to long cause OSCs.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

CHAPTER 8
LONG CAUSE TRIALS

Rule 5.8.1

Long Cause Trials

A. Time Limit. Any trial with a time estimate exceeding one court day is a long cause trial.

B. Trial Setting. The court will set a trial date based on the time estimate at the final CMC, or following the MSC. Inaccurate time estimates may result in a mistrial and sanctions.

C. Trial Preparation. Rule 5.8.2 lists the preparation required prior to a long cause trial. The parties are to prepare and submit the Mandatory Trial Statement, which can be found at www.sdcourt.ca.gov under family law forms, together with the List of Proposed Exhibits, List of Witnesses, Notice of Motions in Limine and Objections to Exhibits of Petitioner/Respondent, not later than seven calendar days prior to trial.

D. Assignment to a Different Court for Trials Estimated Over Two Days

1. When a trial is estimated to last two or more days, the court in which the case is currently assigned may assign the case to either another family law department or to the general civil calendar.

2. The Monday prior to trial call, the court will conduct a pretrial conference to verify that the parties have complied with Rule 5.8.2.

3. Continuances of the trial date may only be granted in the family law court prior to assignment for trial, and only upon a showing of good cause.

4. If the case is to be assigned to the general civil calendar, trial call will be on a Friday, in the Presiding Department of the Central Courthouse. The case may be trailed until a trial department becomes available. The trial judge may confer with counsel on that Friday, but no witnesses will be examined.

5. All in limine motions will be heard by the judge assigned for trial.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.8.2

Long Cause Rules

For any trial set on the long cause trial calendar (these rules do not apply to long cause OSCs) counsel must:

A. SEVEN COURT DAYS OR MORE BEFORE TRIAL

Personally meet and confer to exchange all of the following documents:

1. Trial statements

2. Trial briefs

3. Where support or fees are at issue, current Income and Expense Declarations including all required attachments.

4. A list of proposed exhibits and copies of actual exhibits. (In custody trials, counsel need not exchange the expert's test data, notes, etc., related to an evaluation previously performed if the data and report were previously provided to each counsel).*

5. A list designating non-party witnesses (including name, address and telephone number) and the subject matter of each witness's testimony (see attachment 2).*

B. FOUR COURT DAYS BEFORE TRIAL

1. Telephonically meet and confer to discuss stipulations on admissibility of exhibits, specifying objections to each exhibit to which admissibility is not stipulated, and discuss all aspects of any intended in limine motions.

2. If objections to exhibits are unresolved, or a motion in limine is to be filed, schedule appointment with court for pretrial conference to be held at least 2 court days before trial.

3. File with the clerk of the trial department and personally serve on opposing counsel any in limine motions .

4. Arrange with the clerk of the trial department a date and time to pre-mark exhibits and to file original exhibits.

5. File trial statement, trial brief, Income and Expense Declaration and Court's copy of the exhibits with the clerk of the trial department.

C. THREE COURT DAYS BEFORE TRIAL

File with the clerk of the trial department and personally serve on opposing counsel a written list of objections to the exhibits of the other party.

D. TWO COURT DAYS BEFORE TRIAL

If there are unresolved objections to exhibits or if motions in limine were filed, both counsel must confer personally with the Court to discuss the objections and motions. At that time, the Court may issue a tentative ruling on the issues presented.

E. DAY OF TRIAL

1. All objections to exhibits and motions in limine will be heard on the record and a ruling will be issued before the presentation of opening argument.

2. Each party must pay the mandated statutory court reporter fee for each half day of trial. It is the duty of counsel to know the amount of that fee before the day of trial so that counsel can deliver this amount to the clerk in the trial department before the start of each half day of trial. The amount must be paid in cash or check. Checks can only be from a party or the attorney's client trust account. Checks must be made payable to the Clerk of the Superior Court.

3. Each day, the morning session of trial will usually begin at 9 a.m. and end at noon with a 15 minute break at approximately 10:30 a.m. The afternoon session will usually begin at 1:30 p.m. and end at 4:30 p.m. with a 15 minute break at approximately 3:15 p.m. At the end of each day of a multi-day trial, counsel and the Court will review the next day's witnesses, examination time and any other calendaring issues.

*Any witnesses not disclosed pursuant to these rules will not be permitted to testify at trial. Any exhibits not exchanged pursuant to these rules will not be introduced at trial. The only exceptions are true impeachment or rebuttal witnesses or exhibits.

CHAPTER 9
FAMILY SUPPORT DIVISION MATTERS

Rule 5.9.1

Calendaring

A. Cases to be heard in FSD. Except as otherwise provided by law, all matters involving the DCSS will be set and heard on the FSD Calendar.

1. All Domestic matters filed with the County of San Diego involving parentage determinations or support issues where DCSS has an open case will be heard on a FSD Calendar unless DCSS has provided a written waiver agreeing to the matter being heard in another Family Law court location.

2. Written notice to DCSS is required for any proceeding in a case in which there has been previous DCSS involvement or where one or both of the parties are currently receiving, have received, or intend to apply for any form of public assistance unless not required per Family Code section 17404, subdivision (e)(4). Such notice must be in accordance with Code of Civil Procedure section 1005, subdivision (a) and served on DCSS.

B. FSD Departments. FSD matters are heard in the Central and North County Divisions. Locations and directions are available at www.sdcourt.ca.gov.

C. FSD Calendar Call. The FSD Calendars are called as listed at www.sdcourt.ca.gov or as otherwise determined by the court.

D. Mandatory Meet and Confer. On the day of hearing, prior to appearing in court on a calendared matter, all parties/counsel must meet and confer with the DCSS.

E. Pre-Read Requests in FSD Hearings. If a party or counsel would like the court to read the file prior to a hearing, a pre-read request must be submitted to the court by 12:00 p.m. two days prior to the hearing. Notice of the pre-read request must be given to all parties prior to the submission. If a party or counsel objects to the pre-read request, he or she shall notify the court of their specific objections. Objections shall not prevent the pre-read. For pre-read requests that designate eight or more documents, the requestor must make arrangements with the court to identify the documents in the file with yellow tags.

1. Pre-Read Requests for North County hearings. All pre-read requests are due by 12:00 p.m. one week prior to the hearing date. All other pre-read rules apply.

2. Pre-Read Requests for Trials or Long Cause Hearings. A pre-read request is not required for trials or long cause hearings. Pre-reads will be done by the court on these cases as a matter of course.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.9.2

Telephonic Hearing Requests

A. Request for Telephonic Appearance. The FSD court, in its discretion, may grant a telephonic appearance pursuant to California Rules of Court, rule 5.324 when the DCSS is providing services under Title IV-D of the Social Security Act.

1. Telephonic Appearances are NOT permitted for any of the following:

a. Contested trials, contempt hearings, orders of examination, and any matters in which the party or witness has been subpoenaed to appear in person; and

b. Any hearing or conference for which the court, in its discretion on a case by case basis, decides that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case.

B. Timing of Requests for Telephonic Appearance. Any requests for telephonic appearance must be made at least 12 court days before the hearing utilizing the Request for Telephonic Appearance form (FL-679). The request must be served on all parties by personal delivery, fax, express mail, or other means likely to ensure delivery by the close of business the next court day.

C. Opposition to Request for Telephonic Appearance. Any opposition to a request for telephonic appearance must be under penalty of perjury and served on all parties at least eight court days before the hearing. Service of the opposition may be accomplished through the same methods allowed for requesting a telephonic appearance.

D. Notice by the Court. At least five court days prior to the hearing, the court will notify all parties of its decision.

E. Meet and Confer. All parties granted a telephonic appearance must meet and confer with the DCSS by telephone prior to their telephonic appearance. For the meet and confer, parties must be available at the number listed on their telephonic appearance request form for at least two hours prior to their hearing.

F. Filing of Documents. If a telephonic appearance request is granted, the requesting party must file and serve all relevant documents as required pursuant to Chapter 5 of these rules.

(Adopted 1/1/2008)

Rule 5.9.3

Conduct of Long Cause Hearings and Trials

Long cause hearings and trials set on the Friday FSD calendar or set on the short cause FSD calendar are governed by the rules and readiness procedures as set forth below.

A. Long Cause Hearings

1. Mandatory Meet and Confer. The Monday before the hearing date counsel/parties are ordered to meet and confer either in person or by telephone. On the day of the hearing, DCSS will provide a status report to the court as to the following issues:

a. Issues resolved by stipulation;

b. Contested issues; and

c. Time estimate.

2. Evidence. Long cause hearings are generally limited to factual arguments based on evidence and/or reasonable inferences drawn therefrom, which are contained in declarations filed with the court and signed under penalty of perjury.

3. Oral Testimony. If any party wishes to present oral testimony, written declarations must still be filed in a timely manner. Written declarations must be the direct testimony of the declarant.

4. Notice of Intent. Written notice of the intent to present oral testimony must be served on the opposing party at least five court days before the scheduled hearing. The notice must state the names of the intended witnesses and the subject matter of the witnesses' testimony.

5. Limitations on Oral Testimony. Oral testimony is limited to hostile third party witnesses or cross examination on the contents of the written declarations and/or reasonable inferences drawn therefrom.

a. Oral testimony may also include re-direct and rebuttal, if necessary.

b. If the intended oral testimony will be cross examination of the opposing party, a third party who submitted a written declaration on behalf of the opposing party, or a court appointed expert witness, the party who wishes to conduct the cross examination must set forth in a written declaration the reasons for requesting cross-examination. That declaration must accompany the notice of intent to present oral testimony.

c. Failure to give the required notice will generally result in a denial of the request for oral testimony.

d. Even if proper notice is given, the taking of oral testimony will be left solely to the discretion of the court.

B. Trials

1. Mandatory Meet and Confer. The Monday before the trial, counsel or parties are ordered to meet and confer either in person or by telephone. On the day of the hearing, DCSS will provide a status report to the court as to the following issues:

a. Issues resolved by stipulation;

b. Contested issues; and

c. Time estimate.

2. Filing and Exchange of Documents. By 2:00 p.m. on the Wednesday before trial, counsel/parties must file in the trial department and exchange all documentation including but not limited to the following:

a. Any and all pleadings including but not limited to trial statement and trial briefs, which must include a list of issues, whether contested or uncontested;

b. Where support or fees are at issue, current Income and Expense Declarations including all required attachments pursuant to these rules;

c. A list of proposed exhibits and copies of actual exhibits which are to be pre-marked prior to the trial date; and

d. A list designating non-party witnesses including the witness' name and the subject matter of each witness' testimony.

3. Mandatory Trial Statement. A mandatory trial statement for an FSD matter must include all relevant items listed in the Mandatory Trial Statement form available at www.sdcourt.ca.gov under Family Law forms.

4. Failure to Disclose Witnesses or Exchange Exhibits. Any witnesses not properly disclosed will not be permitted to testify at trial. Any exhibits not properly exchanged may not be introduced at trial. The only exceptions are true impeachment or rebuttal witnesses or exhibits.

5. Stipulations Before Trial or Long Cause Hearing. Should counsel/parties reach a full stipulation at any time prior to the hearing date, the DCSS must inform the court immediately. Stipulations may be entered on the record at the scheduled hearing or trial date or submitted in writing by ex parte hearing at least one court day prior to the scheduled trial or hearing.

(Adopted 1/1/2008; Rev. 1/1/2009)

Rule 5.9.4

Time for Ex Parte Matters

Ex Parte matters will be heard as posted at www.sdcourt.ca.gov. All other requirements as set forth in Chapter 3 as to notice, meet and confer, and the preparation of an ex parte application and proposed order apply.
(Adopted 1/1/2006; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.9.5

Orders

A. Orders Involving the DCSS. All orders involving DCSS will include the following provisions:

1. All payments must be made by wage assignment payable to the State Disbursement Unit;

2. The payor must make all payments directly to the State Disbursement Unit unless payments are fully collected by wage assignment;

3. The payor must provide DCSS with his/her date of birth, Social Security Number, income, employer's name, employer's address, and residential address; and

4. The payor must notify DCSS in writing within 48 hours of any change of address, income, or employment;

B. Stipulations. All stipulations reached in matters involving DCSS must be reviewed and signed by a DCSS attorney before being submitted to the court. If DCSS does not sign the stipulation, one of the parties may place the issue before the court on an ex parte basis.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.9.6

Custody/Visitation Matters

A. Custody and visitation matters are NOT heard in FSD departments. The parties may use the DCSS case number to litigate issues of custody and visitation provided there is a judgment granted in the case. Matters involving issues of custody/visitation are to be filed and heard in the courts of proper venue, i.e. case numbers beginning with:

Case Designation:	To be heard at:
D - Central Division	– 1555 Sixth Avenue, San Diego, CA 92101
DN - North County	– 325 South Melrose, Vista, CA 92081
DE - East County	– 250 East Main Street, El Cajon, CA 92020
DS - South County	– 500 Third Avenue, Chula Vista, CA 91910

DF - Appropriate division depending on the residences of the children and parties.

B. When an Order to Show Cause involving custody or visitation and child support is filed in a case involving DCSS, the filing clerk in the appropriate venue must provide hearing dates as follows:

1. Mediation Date for FCS;

2. Court hearing date for the issues of custody/visitation; and

3. FSD hearing date.

C. OSCs and motions involving custody or visitation must be served on all appropriate parties in accordance with Code of Civil Procedure section 1005.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

CHAPTER 10
CUSTODY/VISITATION MEDIATION AND EVALUATIONS; VISITATION MONITORS

It is recommended that prior to filing an OSC/motion to address disputed issues of child custody or visitation that the parties enroll in a parent education class or participate in family therapy to gain an understanding of the negative impact conflict has on children.

Rule 5.10.1

Mediation Required

Before a hearing on any disputed issue of custody or visitation, the parties must participate in mediation either with a mediator at FCS of the Superior Court or a private mediator retained by the parties. The court may make temporary custody and/or visitation orders pending the hearing. Unless otherwise stipulated by the parties or ordered by the court, FCS mediation and private mediation in San Diego County is understood to be a non-confidential process which means that the information provided to the mediator is not confidential and if the parties do not reach an agreement through mediation, the mediator will submit a recommendation to the court with reasons for the recommendation. Upon a showing of good cause, the court may order that the parties and their minor children undergo a psychological evaluation or custody evaluation to assist in addressing any disputed issue of custody or visitation.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.10.2

Mediation at FCS

Except in cases where the parties stipulate or the court orders private mediation, all disputed custody or visitation matters must be mediated at FCS**.** Parties filing an OSC regarding custody and visitation earlier than six months following their last FCS mediation may appear before the court ex parte to request that the court re-refer the case to FCS. Absent a showing of good cause, the court will not set a new FCS mediation until at least six months have passed since the last such mediation. The locations and telephone numbers of FCS are on the San Diego Superior Court website (www.sdcourt.ca.gov).

A. Initiating FCS Mediation.

1. If unanticipated child custody or visitation issues are raised for the first time at a hearing, the court may make a temporary custody/visitation order and may order the parties to participate in FCS mediation. The parties must meet with an FCS mediator before the court will make final orders regarding a disputed custody/visitation issue.

2. The moving party must file a completed Family Court Services Screening Form (SDSC FCS-46) with the moving papers if custody/visitation is at issue. The business office will assign both a hearing date and an FCS appointment and insert both dates on the moving papers. Both parties are required to attend and participate in the FCS appointment.

B. Resolution; Cancellation, or Rescheduling; Sanctions. Parties are encouraged to try to resolve child custody/visitation disputes before the mediation.

1. If the disputed custody/visitation issue is resolved prior to the FCS mediation, the moving party/attorney must promptly notify the other party/attorney and call FCS to cancel the mediation.

2. Cancellation. Parties may cancel FCS mediation if the custody/visitation issue is dismissed or the parties choose to participate in private mediation prior to the FCS date. The requesting party must notify FCS of the cancellation at least two court days prior to the FCS mediation date.

3. Rescheduling. Parties may reschedule the FCS mediation one time by stipulation by giving notice to FCS at least two court days prior to the mediation date. Subsequent requests to reschedule mediation require court approval, and the requesting party must provide FCS with a copy of the court order granting the scheduling change.

4. Sanctions. Failure to cancel or reschedule mediation at least two court days before the mediation date or failure to attend and participate in the mediation may subject the offending party to monetary sanctions of up to $1,500.

C. Mediation Data Sheet

1. At or before the FCS mediation, each party must submit a completed FCS Mediation Data Sheet to the FCS office. No attachments are permitted to the Mediation Data Sheet.

2. Parties appearing in FCS mediation by telephone must mail a completed FCS Mediation Data Sheet to the FCS office at least five calendar days before the mediation date.

D. Writings and Other Materials for FCS Review; Notice.

1. A party/attorney may provide FCS with writings and other materials including declarations, letters, or other documents for the mediator's review. FCS will only accept the writings and other materials if counsel/party does the following:

a. Serves the writings and other materials on the other party/attorney in accordance with subsections 2 and 3; or

b. Serves written notice on the other party/attorney listing the writings and other materials submitted to FCS in accordance with subsections 2 and 3; and

c. Provides FCS with a copy of the Proof of Service of the writings and other materials and the written notice prior to the start of the mediation session.

2. Service by Moving Party on the Other Party/Attorney. The following constitutes proper service by the moving party: if personally served, at least nine court days before the mediation conference, and if served by other means, the required nine court day period is increased in accordance with Code of Civil Procedure section 1005.

If the FCS mediation date is set 20 or fewer days from the filing of the OSC, the moving party may appear ex parte to request a shorter time for service.

3. Service by Responding Party on the Other Party/Attorney. The following constitutes proper service by the responding party: if personally served, at least two court days before the mediation conference, and if served by other means, the required two court day period is increased in accordance with Code of Civil Procedure section 1005.

4. Expedited Mediation. In the case of expedited mediation, there must be no writings or other materials submitted to FCS for the mediator's review absent court order.

5. Documents Requested by FCS. FCS may request the parties submit additional documents for consideration. Copies of the documents must be provided to the other party concurrently with the submission to FCS.

E. Attendance at Mediation. Other than a statutorily authorized support person, only the parties may attend the mediation. The attorneys do not participate in the FCS mediation. If the mediator wants to interview the child or other person(s), the mediator will arrange for such interviews.

F. Telephone Conference. If an in-person meeting with a mediator at FCS is not feasible, such as when one party resides outside the County of San Diego, mediation will be conducted by telephone with that party. The party appearing telephonically must call FCS to obtain an FCS Mediation Data Sheet for submission to FCS in accordance with subsection C above. The party appearing telephonically shall call FCS at the time designated for the mediation.

G. Agreements Reached in Mediation. If the parties reach an agreement during mediation, the mediator will prepare a written agreement, approved and signed by the parties, and file it with the court.

H. Unresolved Issues in Mediation. If the parties are unable to resolve issues of custody or visitation through mediation, the FCS mediator will submit a written recommendation with reasons for the recommendation to the parties, their attorneys and the court before the custody hearing. If the FCS recommendation is not available at least 10 calendar days before the hearing, the court will generally grant a continuance upon a party's request.

I. Cross Examination of FCS Mediator. A party has the right to cross-examine the FCS mediator at trial or special set hearing. FCS mediators are employees of the Superior Court. A party desiring the testimony of a FCS mediator at trial or special set hearing should first contact FCS to determine availability on the desired date. A subpoena must then be served on FCS at least 10 days in advance of the hearing with fees deposited as required by Government Code sections 68097, 68097.1, and 68097.2. The court will not authorize depositions of mediators absent a showing of extraordinary good cause, such as prolonged unavailability of the mediator on or about the time of trial. Certain privileges attach to FCS files. Judicial officers will not order the release of any FCS documents without a prior in-camera review. A party desiring an in-camera review shall serve a subpoena duces tecum upon FCS for the file/documents at least 15 days before the trial or special set hearing, and if an objection is received, must schedule a motion to compel or Order to Show Cause to obtain the in camera review.

J. Communication with FCS. Communications between mediators, parties, attorneys, including minors' counsel, are governed by Family Code sections 216 and 1818.

K. Request for Change of Mediator.

1. Perceived Bias of Mediator. Should a party believe that a particular mediator is biased in a way that affects the fair and equal treatment, the party may bring this matter to the attention of the Director of FCS for consideration of this perception and assignment to a different mediator.

2. Procedure for Change of Mediator. A peremptory challenge of a mediator is not allowed. However, a party may request a change of mediator by following these rules.

a. During Mediation. A party must request a change of mediator as soon as sufficient basis for a change is known. No request to change a mediator will be granted unless there is a demonstrable showing of bias or prejudice against one of the parties or their attorney such that an independent, fair, and impartial recommendation cannot be made to the court.

b. Subsequent Court Proceedings. If either party files a subsequent court proceeding requiring FCS mediation, either party may, at the time of the assignment, request a different mediator, without a showing of good cause.
(Adopted 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008; Rev. 1/1/2009)

Rule 5.10.3
Private Mediation
A. Initiating the Private Mediation.
1. The parties may stipulate that the issues of custody and visitation be referred for private mediation prior to FCS mediation or in addition to other recommendations made by FCS or an evaluator.
2. The court may order private mediation upon the request of either party.
B. Scope of the Mediation. A formal order must be prepared setting forth the scope of the mediation; identifying the mediator; setting forth the payment plan for the mediator's services; setting forth whether the mediation is confidential or non-confidential; and such other matters as the court deems appropriate. Conformed copies of the order must be provided to the mediator and all parties/attorneys.
C. Mediator Qualifications. Mediators must meet the qualifications, training and continuing education requirements of Family Code sections 1815 and 1816, and will be required to acknowledge that they are so qualified and trained.
D. Writings and Other Materials for Mediator's Review; Notice
1. A party/attorney may provide the mediator with writings and other materials including declarations, letters, or other documents for the mediator's review. The mediator will not accept the writings and other materials unless the party/attorney does the following:
a. Serves the writings and other materials on the other party/attorney in accordance with subsections 2 and 3; or
b. Serves written notice to the other party/attorney listing the writings and other materials submitted to the mediator in accordance with subsections 2 and 3; and
c. Provides the mediator with a copy of the Proof of Service of the writings and other materials and the written notice prior to the start of the mediation session.
2. Service by Moving Party on the Other Party/Attorney. The following constitutes proper service by the moving party: if personally served, at least nine court days before the mediation conference, and if served by mail, the required nine court day period is increased in accordance with Code of Civil Procedure section 1005.
3. Service by Responding Party on the Other Party/Attorney. The following constitutes proper service by the responding party: if personally served, at least two court days before the mediation conference, and if served by mail, the required two court day period is increased in accordance with Code of Civil Procedure section 1005.
4. Documents Requested by the Mediator. The mediator may request the parties submit additional documents for consideration. Copies of the documents must be provided to the other party concurrently with the submission to the mediator.
E. Attendance at Mediation. Unless otherwise stipulated, only the parties and statutorily authorized support persons may attend the mediation. The attorneys do not participate in the mediation. If the mediator wants to interview the children or other person(s), the mediator will arrange for such interviews.
F. Agreements Reached in Mediation. If the parties reach an agreement during mediation, the mediator will prepare a report setting forth the terms of the agreement. If the mediation was non-confidential, either party or the mediator may file the report with the court.
G. Unresolved Issues in Mediation.
1. Confidential Private Mediation. If the parties are unable to resolve issues of custody or visitation through private mediation and the parties stipulated to participate in confidential private mediation, the parties must participate in non-confidential private mediation or schedule and participate in FCS mediation before the matter is heard by the court.
2. Non-confidential Private Mediation. If the parties are unable to resolve issues of custody or visitation through non-confidential private mediation, the mediator will submit a written report with a recommendation and reasons for the recommendation to the parties, their attorneys and the court before the custody hearing. If the report is not available at least 10 calendar days before the hearing, the court may grant a continuance upon request of a party. The written recommendation and report of the mediator will be admitted without further foundation.
H. Cross-Examination of the Mediator. A party has the right to cross-examine the mediator at trial or special set hearing. Either party may call the mediator, upon reasonable notice, to examine the mediator on the report and/or the recommendations at the special set hearing/trial.
I. Communication with the Mediator. Communications between mediators, parties, and attorneys, including minors' counsel, shall be governed by the provisions of Family Code sections 216 and 1818.

(Adopted 1/1/2008)

Rule 5.10.4

Custody Evaluations

A custody evaluation is a process by which a mental health professional uses appropriate professional techniques to gather information to formulate a custody/visitation recommendation that is submitted to the court pursuant to California Rules of Court, rule 5.220.

A. Initiating the Evaluation.

1. The court on its own motion or upon the request of either party may order an evaluation.

2. The parties may stipulate that the issues of custody and visitation be referred for an evaluation prior to or in addition to other recommendations made by FCS.

3. An evaluation may be recommended by FCS following mediation.

B. Scope of the Evaluation.

1. A formal order must be prepared that specifies: the appointment of the evaluator under Evidence Code section 730, Family Code section 3110, or Code of Civil Procedure 2032; the purpose and scope of the evaluation; the referring issues or questions; the evaluator; and such other matters as the court deems appropriate. Conformed copies of the order must be provided to the evaluator and all parties/attorneys.

2. Nothing herein may be construed to prevent the evaluator from contacting all attorneys and/or parties when it appears to the evaluator that new and/or additional information is being provided which causes the evaluator to recommend additional issues for evaluation.

C. Evaluator Qualifications; Selection of Evaluator; Request for Change of Evaluator; Withdrawal by an Evaluator.

1. Qualifications. Evaluators must meet the qualifications, training and continuing education requirements of Family Code sections 1815, 1816, and 3111 and California Rules of Court, rule 5.220(g), and will be required to acknowledge that they are so qualified and trained. Evaluators appointed pursuant to Evidence Code section 730 (Appointment of Expert by Court) under this rule are protected under Civil Code section 47 (Privileged Publications or Broadcasts) acting in the proper discharge of their official duty as appointed by this court for communications made and will be granted immunity from prosecution so long as the evaluator is acting within the judicial proceedings, for the appointment, or in any other official proceedings authorized by the court or law to achieve the objects of the litigation and in connection with or in a manner logically related to the litigation and the underlying action.

2. Selection. The parties may stipulate to the selection of an evaluator subject to the evaluator being approved by the court, or the court may appoint an evaluator.

3. Requests for Change. Requests for a change of evaluator must be made as soon as practicable and based upon good cause. The court will consider the basis and timeliness of the request upon an ex parte application.

4. Evaluators may petition the court to withdraw from a case, for good cause, in a writing directed to the judicial officer to whom the case has been assigned with copies to parties/attorneys. The evaluator need not be present at the hearing unless directed by the court. Any complaints regarding the evaluator will be directed to the appropriate licensing/regulatory board.

D. Writings and Other Materials for the Evaluator's Review. If either party/attorney wishes to submit writings or other materials to an evaluator for consideration during evaluation, he or she must submit the information to the evaluator with a cover letter describing or itemizing the materials provided. The cover letter must clearly state that the information has also been sent to the opposing party/attorney using the same method of delivery as was used for the evaluator (i.e. mail/hand delivery/fax, etc). The evaluator will not review the writings and other materials unless it has been sent to the opposing party/attorney. If the writings and other materials is a tape recording, video cassette, movie film, personal diary, or journal of the other party, that material must be delivered to the opposing party/attorney at least seven calendar days before submitting the item to the evaluator. If the material is an audio recording, it must be accompanied by a written transcript of the recording. The evaluator must immediately return any submitted writings and other materials that were not sent to the opposing party/attorney in accordance with this section.

E. Report of the Evaluator. The evaluator's report and recommendation will be released simultaneously to the parties/attorneys. The evaluator's report and recommendation will be filed with the court and admitted without further foundation. Either party may call the evaluator, upon reasonable notice, to examine the evaluator on the report and/or the recommendations at the hearing/trial.

F. Communication with the Evaluator. Communications between evaluators, parties, and/or attorneys, including minors' counsel, is governed by Family Code sections 216 and 1818.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 5.10.5

Confidentiality of Reports and Recommendations

A. Court Files.

1. All custody evaluator's reports and recommendations and other mental health professional's reports submitted to the court are confidential and will be placed in the confidential section of the court file. These reports and recommendations are available only to the court or persons to whom the court expressly grants access by written order made with prior notice to all parties.

2. All FCS and private mediation reports and recommendations submitted to the court are confidential and will be placed in the confidential section of the court file. These reports and recommendations are available only to the court, the parties, their attorneys, FCS, the court facilitators, and persons to whom the court expressly grants access by written order made with prior notice to all parties.

B. Confidentiality of Reports. Reports usually contain very sensitive information and must not be used to cause unnecessary embarrassment or harm to the parties and must be handled in a responsible, confidential manner for purposes limited to the custody proceeding.

1. Custody Evaluation Reports. Absent a court order to the contrary, minors must not have access to the evaluation report. Anyone receiving the evaluator's report must not give copies, or parts, of the report to anyone who is not assisting in the preparation of the case.

2. FCS/Private Mediation Reports. Minors must not have access to the report. The report must not be given to anyone who is not participating in the custody proceeding. Reports may be provided to the individual therapist of a party or child to assist in the therapy.

(Adopted 1/1/2008)

Rule 5.10.6

Visitation Monitors

A. Purpose. The purpose of a visitation monitor is to provide a safe and nurturing environment for children, during a parent's visitation, where there is need for reunification, alleged/adjudicated emotional, physical or sexual abuse of the child by a parent, or threat of abduction.

B. Visitation Monitor List. A list of visitation monitors is available through the San Diego Superior Court - Programs Resource List (PRL). The individuals/entities have identified themselves to the San Diego Superior Court as visitation monitors. The visitation monitors are not affiliated with the court, and each visitation monitor is independently responsible for compliance with any and all applicable legal requirements. The court does not endorse, evaluate, supervise, or monitor the visitation monitors.

C. Visitation Monitor Requirements. Providers of supervised visitation, whether the provider is a friend, relative, paid independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency are required to follow the legal requirements and obligations set forth in California Rules of Court, Judicial Administrative Standard 5.20. Informational materials about the role of a provider, the terms and conditions of supervised visitation, and the legal responsibilities and obligations of a provider are available at all FCS locations.

D. Non-Professional Visitation Monitors. A non-professional visitation monitor is defined as any person who is not paid for providing supervised visitation services. Prior to supervising any visitation, the non-professional visitation monitor must complete and file with the court a Non-Professional Visitation Monitor Declaration available on the court's website at www.sdcourt.ca.gov under the "Family Law" forms.

E. Grievance Against PRL Visitation Monitor. A party/attorney may file a grievance against the visitation monitor. The grievance must be submitted in writing to the Supervising Judge of the Family Court. The Supervising Judge will forward the grievance to the Presiding Judge of the San Diego Superior Court or his or her designee for review.

F. Removal From PRL Visitation Monitor List. Removal from the PRL list may be made without cause, notice, or explanation. If practical, written notification of removal will be provided.

(Adopted 1/1/2008; Rev. 1/1/2009)

CHAPTER 11
JUDGMENTS AND ORDERS

Rule 5.11.1

Default or Stipulated Judgments

A. Dissolution or Legal Separation. A dissolution or legal separation may proceed by way of default or stipulation. The judgment of dissolution or legal separation is obtained by testimony at a default prove-up or uncontested hearing or by stipulation and/or affidavit pursuant to Family Code section 2336.

1. To obtain entry of default for a judgment of dissolution or legal separation, the Petitioner must complete and file a proof of service of preliminary declaration of disclosure (Declaration Regarding Service of Declaration of Disclosure, Form FL –141) and a Request to Enter Default (Form FL-165) with a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the court clerk as the return address. After default is entered, the Petitioner may apply to the court for the relief sought in the Petition by filing an original and two copies of a judgment packet. A judgment packet must contain the following documents: Declaration for Default or Uncontested Dissolution or Legal Separation (Form FL-170), current Income and Expense Declaration (Form FL-150), which should be on green paper, if support is at issue, Judgment (Family Law) (Form FL-180), which should be on pink paper, with or without a written agreement signed by both parties and Notice of Entry of Judgment (Form FL-190) with stamped envelopes addressed to each party with the court's address as the return address. If a default judgment is submitted without a written agreement signed by both parties, the court may set a default hearing and notify Petitioner of the day and time.

2. If the proposed default judgment is not by way of agreement or a stipulated judgment and includes division of property, a fully completed current Property Declaration (Form FL-160) including values must be filed. The court cannot divide any assets or debts that are not listed on the Petition or Property Declaration filed with the court and served on Respondent.

3. If the proposed default judgment is not by way of agreement or a stipulated judgment and includes provisions for child support, spousal support or a waiver thereof or attorney's fees or costs, the moving party must also file a current Income and Expense Declaration (Form FL-150), which should be on green paper. Neither child nor spousal support will be granted unless the moving party sets forth an estimate of the other party's income in the Income and Expense Declaration. If the moving party does not know the other party's present income, this requirement may be met by evidence of the other party's ability to earn, work history or other relevant facts.

4. Default prove up hearings must be set within 45 days of submission of the proposed judgment.

5. Stipulated Judgments. Stipulated judgments and agreements attached to judgments must contain the following waivers: 1) the matter may proceed on the default or uncontested calendar before a temporary judge; and 2) the parties waive their rights to notice of trial, a statement of decision, to move for a new trial and to appeal. If both parties have appeared and submit a judgment with attached written settlement agreement signed by both parties, or if a default judgment is submitted with a written settlement agreement signed by both parties, the judgment packet must also include Declarations Regarding Service of Declaration of Disclosure (Form FL-141) regarding the Preliminary Declaration of Disclosure (Form FL-140) from each party unless previously filed or included in the original proof of service. If the parties did not exchange Final Declarations of Disclosure (Form FL-140), a Stipulation and Waiver of Final Declaration of Disclosure (Form FL-144) or a separate stipulation signed by each party must be included. A waiver included in a marital settlement agreement or stipulated judgment is not sufficient. If a Response (Form FL-120) has not been filed, Respondent's signature on the written settlement agreement or stipulated judgment must be notarized (Fam. Code, § 2338.5, subd. (a)).

6. If the default or stipulated judgment does not include orders involving custody, visitation, support, or division of community property, the court will be deemed to have retained jurisdiction over these issues.

B. Nullity

1. A Nullity Judgment may proceed by way of default. Because findings must be made by the court regarding a nullity, nullity judgments may not be entered by way of stipulation.

2. Requests for a judgment in a nullity action must be accompanied by a declaration setting forth facts which support the request. If there is even minimal doubt that the nullity will be granted, Petitioner can set forth in the original petition a request for a nullity or, in the alternative, a dissolution. If Petitioner requests nullity or dissolution in the alternative, then all of the requirements for both a judgment of nullity and a judgment of dissolution apply as set forth above.

3. If Petitioner requests a default judgment of nullity, then Petitioner must file a Request to Enter Default (Form FL-165) and a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the court clerk as the return address. After default is entered, Petitioner may apply to the court for the relief sought in the Petition by filing an original and two copies of a judgment packet. A judgment packet must contain the following documents: Judgment (Family Law Form FL-180), which should be on pink paper, and Notice of Entry of Judgment (Form FL-190) with stamped envelopes addressed to each party with the court's address as the return address. The court will set a prove up hearing and notify Petitioner of the day and time.

4. If a Response has been filed, the Petitioner may request a judgment and prove up hearing, by filing a judgment packet as set forth above. The court will set a hearing and both parties will receive notice.

C. Paternity. A judgment in a paternity action may proceed by way of default or stipulation. The judgment is obtained by testimony at a default prove-up, or by submission of a Stipulation For Entry of Judgment Re: Parental Relationship (Form FL-240) and/or Judgment (Uniform Parentage) (Form FL-250) with or without an attached written agreement signed by both parties.

1. Default Judgment. To obtain a default judgment in a paternity action, Petitioner must complete and file a Request to Enter Default (Form FL-165) with a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the court clerk as the return address. After default is entered, the Petitioner may apply to the court for the relief sought in Petition by filing an original and two copies of a judgment packet. A judgment packet must contain the following documents: Declaration for Default or Uncontested Judgment (Uniform Parentage, Custody and Support (Form FL-230), Advisement and Waiver of Rights Re: Establishment of Parental Relationship (Form FL-235), current Income and Expense Declaration (Form FL-150) if child support is at issue, Judgment (Uniform Parentage – Custody and Support) (Form FL-250), which should be on pink paper, with attached Child Support Attachment to Judgment (Form FL-341) if child support is at issue, Child Custody and Visitation Schedule (Form FL-342) if custody and/or visitation is at issue, and Notice of Entry of Judgment (Form FL-190) with stamped envelopes addressed to each party with the court's address as the return address. If a default judgment is submitted without a written agreement/stipulated judgment, the court will set a default prove up hearing and notify Petitioner of the day and time.

2. If the proposed default judgment includes provisions for child support or attorney fees or costs, the moving party must also file a current Income and Expense Declaration (Form FL-150), which should be on green paper. Child support will not be granted unless the moving party sets forth an estimate of the other party's income in the Income and Expense Declaration. If the moving party does not know the other party's present income, this requirement may be met by evidence of the other party's ability to earn, work history, or other relevant facts.

3. Default prove up hearings must be set within 45 days of submission of the proposed judgment.

4. Stipulated Judgments. Stipulated judgments and agreements attached to judgments must contain the following waivers: 1) the matter may proceed on the default or uncontested calendar before a temporary judge; and 2) the parties waive their rights to notice of trial, a statement of decision, to move for a new trial and to appeal. If both parties have appeared and submit a signed Stipulation for Entry of Judgment or a Judgment with an attached written settlement agreement signed by both parties, the judgment package must also include Declaration for Default or Uncontested Judgment (Uniform Parentage) (Form FL-230), Stipulation for Entry of Judgment Re: Establishment of Parental Relationship (Form FL-240) with an Advisement and Waiver of Rights Re: Establishment of Parental Relationship (Form FL-235) from each party, Judgment (Uniform Parentage) (Form FL-250), which should be on pink paper, with or without a written agreement signed by both parties, Notice of Entry of Judgment (Form FL-190) with stamped envelopes addressed to each party with the court's address as the return address. If there is no written agreement attached to the judgment, the parties must attach to the judgment a Child Custody and Visitation Order Attachment (Form FL-341) and/or a Child Support Information Order and Attachment (Form FL-342) if custody/visitation and/or child support are at issue. If a Response to Petition to Establish Parental Relationship (Form FL-220) has not been filed, the Respondent's signature on the Stipulation or the written agreement attached to the judgment must be notarized (Fam. Code, § 2338.5, subd. (a)).

D. Stipulated Judgments Which Include Child Support and/or Custody.

1. Stipulated judgments and agreements attached to judgments must contain the following waivers: 1) the matter may proceed on the default or uncontested calendar before a temporary judge; and 2) the parties waive their rights to notice of trial, a statement of decision, to move for a new trial and to appeal.

2. Stipulated judgments which contain orders regarding child support must include the following Child Support Acknowledgments:

a. Each party is fully informed of their rights concerning child support;

b. The order is being agreed to without coercion or duress;

c. The agreement is in the best interests of the child involved;

d. The needs of the child will be adequately met by the stipulated amount of support; and

e. The right to support has not been assigned to the county pursuant to section 11477 of the Welfare and Institutions Code and no public assistance application is pending.

3. Stipulated judgments which contain orders regarding child custody and/or visitation must include the following:

a. The basis for the court's exercise of jurisdiction;

b. The manner in which notice and opportunity to be heard were given;

c. A clear description of the custody and visitation rights of each party;

d. A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties, or both; and

e. Identification of the country of habitual residence of the child or children.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.11.2

Preparation of Orders and Judgments

A. Findings and Orders After Hearing.

1. Counsel for the moving party must prepare a formal order unless the court orders opposing counsel to do so. (The party preparing the original proposed order is referred to in this Rule as the "preparing party.") If neither party is represented by counsel, the court may request that the Family Law Facilitator's Office prepare the order and submit it directly to the court. Findings and Orders After Hearing should be prepared on brown paper. The order must be prepared so that at least two lines of text appear on the page which will have the judge's signature, and no text may appear after the judge's signature. The Agreement or Recommendation portion of a FCS Report may be attached as an exhibit to an order when the court has adopted the listed provisions as its order. No other portion of the FCS report shall be attached to the order.

2. The order must be prepared and submitted to the other party (referred to in this rule as the "responding party") within five calendar days of the hearing. The preparing party must forward it to the responding party for approval as to form and content unless the court authorized the preparer to submit it directly to the court. The responding party has 10 calendar days from the date the proposed order or judgment was mailed to review the order and either sign it as prepared or notify the preparing party in writing of objections to its content.

3. If the responding party fails to timely approve or object to the order, the preparing party must send a second letter to the responding party stating that the proposed order will be submitted to the court for signature if no written response to the order is received within five calendar days of the second letter. If there is no written response to the second letter, the preparing party must submit the following to the court clerk: (1) the proposed order; (2) copies of both letters to the responding party; and, (3) a declaration explaining the circumstances and requesting that the proposed order be signed by the judicial officer.

4. If the responding party timely objects to the proposed order and the parties cannot thereafter agree on the language of the order, the court will be guided by the transcript of the hearing. Within 10 calendar days of receiving written objections to the proposed order, the preparing party must request and advance the cost for a transcript. Each party must be responsible for one-half of the cost of the transcript. Upon receipt, a copy of the transcript and a copy of the bill must be immediately provided to the responding party. No later than 25 calendar days after delivery of the copy of the transcript to the responding party regardless of whether the copy is delivered personally or by mail, the parties must exchange new proposed orders based on the transcript. If the parties still cannot agree on the language of the order, then no later than 45 calendar days after delivery of the copy of the transcript to the responding party, the preparing party must submit the following to the judicial officer who made the ruling: (1) both parties' final proposed orders; (2) a copy of the transcript; (3) all written objections from all parties; and (4) a clear explanation as to how the final proposed orders differ. Copies of all papers submitted to the court must be immediately served on the responding party. The proposed order accepted by the judicial officer will be executed and filed. Failure to comply with this rule may subject a party or the attorney to sanctions.

B. Judgments.

1. Counsel may stipulate as to who will prepare the judgment, or the court will order one of the parties to do so. The judgment should be prepared on pink paper. Local Rule 5.11.2.A.1 will also apply to judgments.

2. The judgment must be prepared and submitted to the other party within 30 calendar days of the trial. The preparing party must forward it to the responding party for approval as to form and content unless the court authorized the preparer to submit it directly to the court. The responding party has 30 calendar days from the date the proposed judgment was mailed to review the judgment and either sign it as prepared or notify the preparing party in writing of objections to its content.

If the responding party cannot agree to the language of the judgment, the preparing party must request and advance the cost for a transcript. Each party must be responsible for one-half of the cost of the transcript. Upon receipt, a copy of the transcript and a copy of the bill must be immediately provided to the responding party. The parties must then meet and confer regarding finalizing the judgment. If they cannot agree, they must submit the proposed judgment to the court in accordance with Local Rule 5.11.2A.3. If the judgment arose as the result of a settlement placed on the record before the court, and the parties cannot agree on the language of the judgment, either party may file a motion under Code of Civil Procedure section 664.6.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.11.3

Mandatory Child Support Case Forms

A. Pursuant to Family Code section 4014, a Child Support Case Registry Form (FL-191) must be included with all child support orders issued or modified.

B. Pursuant to Family Code sections 4062 and 4063 a Notice of Rights and Responsibilities (Form FL-192) must be attached to all orders and judgments which include provisions for child support.
(Adopted 1/1/2008)

CHAPTER 12
MISCELLANEOUS

Rule 5.12.1

Child Support

A. Amount of Support. In any proceeding in which a party seeks to establish or modify child support, whether temporary or permanent, based on State or Federal Law, the amount will be determined pursuant to Family Code sections 4050 et seq.

B. Presumptions Used to Calculate Support Pursuant to Family Code section 4059, subdivision (a), the following rebuttable presumptions will be applied to determine the appropriate income tax filing status and number of withholding exemptions for a party. These presumptions may be rebutted by any relevant factors (such as the fact that the parties are likely to file joint returns for the current tax year) and any material generated by computer programs certified by the Judicial Council:

1. Single Status will be presumed if the party has less than 50 percent time share with the child of the relationship before the court and does not have any additional dependents. In such an event, the court will presume there is one exemption for tax withholding purposes.

2. Head of Household Status will be presumed if the party has not remarried and has greater than 50 percent time share with a child of the relationship before the court or has another dependent that qualifies the party for Head of Household status. The number of exemptions for tax withholding purposes will be one plus the number of other dependents the party is entitled to claim for income tax purposes.

3. Married Status will be presumed if the party is married to someone other than the other party. The total number of exemptions assigned for tax withholding purposes will be that to which the party is entitled for income tax purposes.

4. The court will apply the "standard deductions" unless sufficient evidence is presented to allow the court to determine appropriate itemized deductions.

5. Time sharing percentages will be calculated by assigning each parent the number of hours that the child is scheduled to be with that parent or to be under the care, custody or control of that parent. Unless rebutted by competent evidence, it will be assumed that the hours credited to a parent who is not the primary caretaker begin at the time the child is transferred to his or her care and do not extend beyond the end of his or her custodial or visitation time when the child is returned to the other parent or to the child's school or day care provider. "Primary caretaker" refers to the parent who has custody of the child the majority of the time.

C. Income and Expense Declarations. In any proceeding in which a party is seeking child support, both parties must comply with Local Rule 5.6.2 regarding the filing of current Income and Expense Declarations.

D. Stipulations

1. Mandatory Language. In order to be accepted by the Court, any written stipulation for the payment of child support must include the following language: "The parties declare all of the following:

a. They are fully informed of their rights concerning child support;

b. The order is being agreed to without coercion or duress;

c. The agreement is in the best interests of the children involved;

d. The needs of the children will be adequately met by the stipulated amount; and

e. The right to support has not been assigned to any county pursuant to section 11477 of the Welfare and Institutions Code and/or Family Code section 17404, and no public assistance application is pending."

2. Issuance of Wage Assignment Order. Absent a written waiver, a written stipulation for the payment of child support must include the following or similar language: "A wage assignment order will be issued for the payment of support ordered pursuant to this agreement."

3. Stay of Service of Wage Assignment Order. The stipulation may provide for the stay of service of the wage assignment order by including the following or similar language: Pursuant to Family Code section 5260 et seq., the parties agree that they are specifically providing for an alternative arrangement for the payment of the support obligation set forth in this agreement that is acceptable to both parties. The parties further agree to stay the service of the wage assignment order until the stay is terminated pursuant to Family Code section 5261."
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.12.2

Spousal Support Guideline

San Diego County has declined to adopt any specific spousal support guideline. The Court will consider all relevant factors in setting temporary spousal support including guideline calculations based upon any formulae adopted in other counties of this state.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.12.3

Attorneys Seeking to be Relieved as Attorney of Record

Absent a properly executed substitution of attorney form, attorneys will not be relieved as attorney of record unless a properly served notice of motion or OSC (using the applicable Judicial Council form) is before the court. Counsel must comply with California Rules of Court, rule 3.1362. The entry of a status-only judgment may not be a basis for withdrawal pursuant to Code of Civil Procedure section 285.1.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.12.4

Bifurcation of Marital Status

A request to bifurcate the trial of the marital status from the remaining issues in the case will ordinarily be granted, and the requesting party will be permitted to present jurisdictional testimony to obtain a judgment of dissolution (status only). The motion to bifurcate must have attached a completed Judicial Council Form FL-315. The court order must comply with Family Code section 2337.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.12.5

Writs of Execution

Writs of execution on judgments or orders in a fixed amount, or based on judgments or orders providing for installment payments, do not require a judicial officer's signature or notice to the opposing party before presentation to the records division of the clerk's office for approval and issuance.

A supporting declaration must be submitted to the clerk. The declaration must allege, under penalty of perjury, the date and amount of the judgment or order, the date and amount of any payments thereon and the current, unpaid balance. For writs based on installment judgments or orders, the declaration must clearly set forth in columns the date and amount of each payment as it came due, the date and amount of any payments received and a running total of the amount owing. The supporting declaration for either type of judgment or order must also state that no other writ on this judgment or order is outstanding in the same county and that the arrearages have accrued within the past 10 years, unless the arrearages relate to child support, spousal support or family support in which case Family Code section 4502 will govern.

The writ may include the fee paid for issuance of the writ. If attorneys' fees are requested, a hearing is required, and a current Income and Expense Declaration must be filed with the application. If the moving party is requesting interest on the arrearages or costs not awarded in the original order, a declaration setting forth the calculation of the amount of interest on the arrearages or a cost bill must be filed.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.12.6

Elisors

Where one of the parties fails to execute a document necessary to carry out a court order, the Clerk of the Superior Court or the Clerk's authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte. When applying for the appointment of an elisor, the application and proposed order must designate "The Clerk of the Court or the Clerk's Designee" as the elisor. The application must not set forth a specific court employee. The declaration supporting the application must include specific facts establishing the necessity for the appointment of an elisor.

If the Court grants the application for appointment of an elisor, the applicant must contact the business office to make an appointment for the actual signing of the document(s) to ensure the availability of an authorized elisor. If the elisor is signing documents requiring notarization, the applicant must arrange for a notary to be present when the elisor signs the document(s).
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.12.7

Appointment of Counsel for Children

Pursuant to Family Code section 3150, subdivision (a), counsel may be appointed to represent the best interests of the children who are the subject of a custody or visitation dispute ("minor's counsel").

A. Persons Who May Request the Appointment. The persons who may request the appointment of minor's counsel are specified in California Rules of Court, rule 5.240(b). The court may also appoint minor's counsel on its own motion.

B. Guidelines for Appointment. When appointing minor's counsel, the court will be guided by the considerations for appointment set forth in California Rules of Court, rule 5.240(a).

C. Qualifications for Appointment. The qualifications to serve as minor's counsel are as set forth in California Rules of Court, rule 5.242. Before beginning work on the case and no later than 10 days after being appointed, minor's counsel shall file Judicial Council Form FL-322 (Declaration of Counsel for a Child Regarding Qualifications), to establish that the qualifications to serve as minor's counsel have been met.

D. Duties of the Parties Upon Appointment of Minors Counsel. Upon the appointment of minors counsel, the parties must provide minors counsel with copies of all substantive pleadings, declarations and exhibits filed or lodged in the case, the name, address and telephone number of each professional who has provided services to the children, and a list of the contentions of the parties bearing on custody and visitation. The court will order the parties to provide the information and sign releases to permit all professionals who are or have been involved with the parties and/or the child to provide information as requested by minors counsel.

E. Rights and Responsibilities of Appointed Minors Counsel. Upon appointment, minors counsel will be vested with all rights and duties set forth in Family Code sections 3151, 3151.5 and 3152, and California Rules of Court, rule 5.242.

1. Once counsel for a child has been appointed, he or she must be given notice of all future proceedings and the child must be treated as a party to the action. Accordingly, all written communications and documents regarding child custody/visitation and related issues must be copied to the other attorney and the child's counsel. The child's counsel must participate in any proceeding in which custody, visitation or related matters are at issue. The child's counsel may participate in other proceedings if counsel believes the child's best interests would be served by such participation.

2. Requests by minors counsel for the appointment of experts and/or investigators must be made in writing to the Supervising Family Judge prospectively. Requests will be determined on a case-by-case basis, including a determination of reasonable fees to be incurred. Requests for fees for experts and/or investigators retained without prior court approval will be denied.

F. SDSC Form D-137 (Declaration and Order for Payment of Fees and Costs). Minors counsel must file D-137 with the court quarterly, regardless of whether there has been any billing and/or case activity during the quarterly cycle. The form must be filed within two weeks after the end of each quarter. Fees incurred must be billed at 0.1 hour increments; bills with a minimum increment of .25 hour will not be processed.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.12.8

Appraisal of Closely Held Business Interests

A. Standard of Value for Business Appraisal. Businesses are appraised in Family Law proceedings to establish the value of the interest to the spouse who is awarded the business.

B. Procedure to be Followed in Appraisal Process. Unless the parties agree via written stipulation to appoint and compensate a joint appraiser, the identification of appraisers for each side will be subject to Code of Civil Procedure section 2034 et seq. The parties will notify the court at the initial CMC of the need to set dates for the identification of expert trial witnesses, including appraisers.

C. Appraisal Reporting Requirements. The appraisal must state the specific reasons that would justify the use of the appraisal method(s) chosen. The appraisal must state the risk and other factors specific to this business that were considered in selecting the capitalization rate and the nature of the impact each factor had on this rate. The appraiser must state the factors considered in arriving at any reasonable compensation estimate used in the appraisal, including compensation studies or other reference materials. The appraisal must state the factors considered in making any other adjustments, assumptions or estimates made in the appraisal process.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.12.9

Discretionary Dismissal

Pursuant to Code of Civil Procedure section 583.410 and California Rules of Court, rule 3.1340, cases which a judgment has not been filed or which have not been brought to trial within three years after the action was commenced may be set for a hearing to dismiss the case. The filing of a judgment or a dismissal will vacate the

hearing. If the Petitioner/Plaintiff does not appear at the hearing the case will be dismissed without prejudice, subject to the court's reservation of jurisdiction to set aside the dismissal nunc pro tunc. Cases involving DCSS will be reinstated administratively once service has been obtained.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.12.10

Family Law Facilitator's Duties

The services provided by the Family Law Facilitator are pursuant to Family Code sections 10004 and 10005.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.12.11

Communication Between Court Divisions

The court will develop procedures to facilitate communication between divisions regarding information involving child custody and visitation orders and criminal court protective orders pursuant to California Rules of Court, rule 5.450.
(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008)

Rule 5.12.12

Appointment of Counsel Under Service Members Civil Relief Act

If the Respondent or responding party is in the military service, the Service Members Civil Relief Act (the "Act") may apply. (50 U.S.C. Appen. § 501 et seq.)

A. If the service member has not made an appearance.

1. The court may not enter a default judgment until the court appoints an attorney to represent the Respondent. If the appointed attorney cannot locate the service member, the actions taken by the attorney will not bind the service member or waive any defenses.

2. The court must grant a minimum 90-day stay of the proceedings if there may be a defense to the proceeding which cannot be presented without the presence of the service member, or if after due diligence, appointed counsel has been unable to contact the service member to determine if there is a meritorious defense.

B. If the service member has received notice of the proceeding.

1. The Court must grant a minimum 90-day stay of the proceedings if the service member communicates that military duty requirements materially affect the service member's ability to appear, stating a date when the service member will be available, and if the service member's commanding officer communicates that the service member's current military duties prevent an appearance and leave is not authorized at the time of the hearing.

2. The service member may apply for an additional stay in the same manner as the original request. If the court refuses to grant the additional stay, the court must appoint counsel to represent the service member in the proceeding.

C. Procedure.

1. Appointments of counsel under the Act are pro bono.

2. Any individual holding a power of attorney from the service member may appear in court on his or her behalf to request a stay or additional stay.

3. A request for a stay does not constitute a general appearance for jurisdictional purposes or a waiver of substantive or procedural defenses.
(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008, Rev. 1/1/2009)